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## MEMORANDUM

TO:Don Michael, FEC Analyst

FROM:Michael Nemeroff

Elizabeth Peetz

RE:Miscellaneous Report (Form 99)

DATE:October 30, 2014

Mallinckrodt LLC Political Action Committee (C00569152) (the "Mallinckrodt SSF") filed its Statement of Organization and checked box 5(e), indicating that it is a separate segregated fund, identified its connected organization as the Ludlow Corporation, and did not adopt the name of its connected organization. In making these choices it relied upon AO 2009-14 and AO 2004-42 because its organization is legally indistinguishable from the organization of the requestors of these advisory opinions in all material respects.

Mallinckrodt LLC is one of the top 10 U.S. specialty pharmaceutical companies; it has been in business in the United States for more than 147 years. Mallinckrodt LLC is 100 percent owned by Mallinckrodt Enterprises LLC which compensates all U.S. employees; both are organized under Delaware law. Mallinckrodt Enterprises LLC is exclusively owned by U.S. corporations, the largest of which is Ludlow Corporation, which is organized under Massachusetts law and owns 85 percent of Mallinckrodt Enterprises LLC. Ludlow Corporation and all Mallinckrodt businesses in the United States are 100 percent owned by Mallinckrodt Plc, an Irish corporation. This structure is legally the same for FEC purposes as the corporate structures in AO 2009-14 and AO 2004-42.

For federal tax purposes, Mallinckrodt LLC is treated as a "disregarded entity," the same tax treatment as the LLC in AO 2004-42. The organization, administration, and solicitation expenses of Mallinckrodt SSF will be paid by Mallinckrodt LLC just as Mercedes-Benz USA LLC provided these services in AO 2009-14. Consistent with FEC regulations and advisory opinions all decision-making regarding Mallinckrodt SSF will be made exclusively by executive or administrative personnel of Mallinckrodt LLC who are U.S. citizens or legal permanent residents. In AO 2009-14, the Commission noted that "domestic subsidiaries of foreign corporations may establish and administer SSFs if they are discrete entities whose principal place of business is the United States." Mallinckrodt LLC and Ludlow Corporation meet these requirements, and Mallinckrodt LLC will use exclusively U.S. source revenues for these purposes.

The FEC has issued numerous advisory opinions determining whether a political action committee organized by a limited liability company ("LLC") may be treated as a SSF, may use the name of the LLC, and may have its solicitation and administrative expenses paid by the LLC. The basic principles are stated most succinctly in AO 2009-14 in which the Commission explained that a partnership or an LLC owned entirely by a corporation is permitted to pay the administrative and solicitation costs of a separate segregated fund:

MBUSA LLC is treated as a partnership under Commission regulations because it is a non-publicly traded LLC that has not affirmatively elected treatment as a corporation for tax purposes. 11 CFR 110.1(g)(2) and (3); see also Advisory Opinion 2004-42 (Pharmavite). In addition, MBUSA is wholly owned by ? and affiliated with ? DNAC. 11 CFR 100.5(g)(3)(i) and 110.3(a)(2)(i). Therefore, MBUSA LLC would be able to perform the functions of a connected organization for an SSF connected to DNAC, including paying the SSF's administrative and solicitation costs. See Advisory Opinions 2004-42 (Pharmavite) and 1997-13 (USA PAC). For internal business reasons, though, DNAC has chosen not to serve as the connected organization

Mallinckrodt LLC is in exactly the same position as MBUSA LLC. It is wholly owned by corporations, and it has not affirmatively elected to be taxed as a corporation for federal tax purposes. Therefore, based on AO 2009-14, Mallinckrodt LLC should be allowed to pay the administrative and solicitation costs of Mallinckrodt SSF.

In AO 2004-42, the Commission considered

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whether a separate segregated fund established by Pharmavite LLC (?Pharmavite?), which was 100 percent owned by Otsuka America, Inc. (?OAI?), could be named after Pharmavite and could identify Otsuka America, Inc. as its connected organization. Pharmavite, like Mallinckrodt LLC, was considered a ?disregarded entity? for federal tax purposes and was treated as a partnership with a corporate owner. Normally, FEC rules require an SSF to have the same name as its ?connected organization;? however, an LLC may not be a connected organization. 11 C.F.R. 100.6(a). In AO 2004-42, the Commission identified the reasons why an SSF of an LLC would be allowed to take a different name:

Under such circumstances, the Commission has allowed the SSF to omit the corporate names of the LLC?s affiliated corporate owners from its name because the LLC was in virtually the same position as a corporate subsidiary of the owner corporation. (A subsidiary need not include its corporate parent?s or other subsidiaries? names in the name of its PAC).

Pharmavite is a wholly corporate-owned LLC treated as a partnership under Commission regulations that is in the position of a subsidiary. Although Pharmavite cannot serve as the PAC?s connected organization, it may perform the functions of a connected organization because it is in the same position of a subsidiary of OAI. Therefore, the PAC?s name may include Pharmavite?s name alone. Further, because OAI must be listed in the PAC?s statement of organization as the PAC?s connected organization, OAI?s relationship to the PAC will be disclosed to the public. Additionally, because the PAC?s primary focus will be issues of interest to Pharmavite and its employees, and Pharmavite will use its personnel to conduct the day-to-day operations of the PAC, the use of Pharmavite?s name in the PAC?s name will provide the public with a more accurate understanding of the PAC?s funding and purpose.

Mallinckrodt LLC is in the same position as Pharmavite. As explained in AO, 2004-42, Mallinckrodt SSF has disclosed Ludlow Corporation as its connected organization on its Statement of Organization. As in AO 2004-42, the Mallinckrodt SSF?s primary focus will be issues of interest to Mallinckrodt LLC. Therefore, using the Mallinckrodt LLC name in the name of the PAC, rather than the name of Ludlow Corporation, ?will provide the public with a more accurate understanding of the PAC?s funding and purpose? and is allowed by AO 2004-42.

For all of these reasons, it is respectfully urged that the Reports Analysis Division accept the Statement of Organization of Mallinckrodt LLC Political Action Committee as filed.

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